

**REMARKS**

Favorable reconsideration of the subject application, as amended above, is respectfully requested in view of the following comments.

Claims 1-20 are pending in the present application. Claims 1-4 have been withdrawn from consideration. Claims 6, 8, 10 and 12 are canceled herein. Accordingly, claims 5, 7, 9, 11 and 13-20 are presented for examination on the merits.

The limitations of claims 6 and 8 have been incorporated into claims 5 and 13. The limitation of claim 8 has been incorporated into claim 10. The language of claims 5, 9, 13, 16 and 17 has been amended to more clearly define the claimed invention. These amendments are not substantive in nature. Each of these amendments is supported by the original claims or specification. Accordingly, no new matter is added.

On page 2 of the Office Action, the Examiner incorrectly states that claims 1-5 have been withdrawn from consideration. Claims 1-4 have been withdrawn, and the elected claims include claims 5-20.

**I. Objections to Claims**

The Examiner objects to claims 8 and 13, as containing formatting or typographical errors. The formatting error referred to by the Examiner is actually in claim 6, and it has been corrected herein. The typographical error in claim 13 has been corrected. Accordingly, the objections to the claims are respectfully rendered moot by these amendments to the claims.

**II. Rejection of Claims 10-12 Under 35 U.S.C. § 112, Second Paragraph**

It is respectfully submitted that the cancellation of claim 10 and amendment of claims 11 and 12 to change the dependency to claim 5, renders this ground of rejection moot. Accordingly, the rejection of claims 10-12 under 35 U.S.C. § 112, second paragraph is respectfully traversed.

The Examiner also included claim 9 in the rejection of claims 10-12. It is respectfully submitted that the amendment to claim 9 renders any rejection of this claim moot.

**III. Rejection of Claims 5-12 Under 35 U.S.C. § 102(a)**

Claims 5-20 are rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by Uzbay et al. The Examiner states that the cited reference teaches the structure and effect of agmatine on audiogenic seizures.

This rejection is respectfully traversed as follows.

The cited reference merely teaches the structure of agmatine and its effects on alcohol withdrawal in rats. The reference does not disclose or suggest the use of agmatine to treat epilepsy in humans, and indeed, merely addresses the effects of agmatine on seizures associated with alcohol withdrawal and noise in rats. This reference does not teach, nor does it suggest the use of agmatine or the disclosed agmatine derivatives for the treatment of epilepsy. As such, the cited prior art does not anticipate the claimed invention.

Accordingly, the rejection of claims 5-20 under 35 U.S.C. § 102(a) is respectfully traversed.

**IV. Rejection of Claims 5-12 Under 35 U.S.C. §(b)**

Claims 5-12 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Seeley. The Examiner states that the cited reference teaches use of dimaprit to treat seizures associated with epilepsy.

This rejection is respectfully traversed as follows.

The amended claims do not encompass dimiprit. As such, the cited reference does not teach the claimed invention. Moreover, the cited reference does not suggest that agmatine or any other derivative of agmatine is an effective treatment for epilepsy. Thus, the cited reference does not render the claimed invention obvious.

Accordingly, the rejection of claims 5-12 under 35 U.S.C. § 102(b) over Seeley et al. is respectfully traversed.

**V. Rejection of Claims 5-13 Under 35 U.S.C. § 102(b)**

Claims 5-13 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Cherksey et al ('202 patent). The Examiner states that the cited reference teaches use of agmatine as a calcium channel modulator. The Examiner concludes, therefore, that the cited reference anticipates the use of agmatine to treat seizures associated with epilepsy.

Applicants respectfully disagree with the Examiner's conclusion.

The cited reference does not teach or suggest the use of agmatine or the derivatives of the subject invention for the treatment of epilepsy. Instead, the cited reference merely discloses the use efficacy of agmatine as a calcium channel modulator. There is no discussion of epilepsy, seizures or the use of agmatine to treat the seizures associated with epilepsy in the cited reference. As such, this reference does not anticipate the claimed invention. For that matter, the terms "epilepsy" and "seizure" are not even mentioned in the patent. Accordingly, the rejection of claim 5-13 under 35 U.S.C. § 102(b) over the '202 patent is respectfully traversed.

**VI. Rejection of Claims 5-7, 10 and 12 Under 35 U.S.C. § 102(b)**

Claims 5-7, 10 and 12 are rejected under 35 U.S.C. § 102(b) over WO '653. The Examiner states that the cited PCT application discloses the use of NO synthase inhibitors, such as agmatine, to

treat epilepsy. The Examiner concludes, therefore, that the cited reference anticipates the claimed invention.

Applicants respectfully disagree with the Examiner's conclusion.

The cited reference teaches that treatment of over 56 diverse pathological conditions ranging from diarrhea to cancer with a variety of NO synthase inhibitors in combination with another compound that traps reactive oxygen. The PCT application lists over 23 NO synthase inhibitors including agmatine, but does not disclose the use of agmatine alone to treat any disease, and in particular, does not teach the use of agmatine to treat any particular disease. Most noteworthy, is the absence of any teaching in the PCT application of the use of agmatine to treat seizures associated with epilepsy. Moreover, there is no teaching or suggestion of an amount of agmatine which effectively treats the seizures associated with epilepsy. As such, the cited reference does not anticipate the claimed invention.

Accordingly, the rejection of claims 5-7, 10 and 12 under 35 U.S.C. § 102(b) over WO '202 is respectfully traversed.

#### **VI. Rejection of Claims 14-20 Under 35 U.S.C. § 103(a)**

Claims 14-20 are rejected under 35 U.S.C. § 103(a) over Cherksey et al., in combination with Lerman et al. The Examiner states that Cherksey et al. differs from the claimed invention only in the use of electroencephalogram to identify patients in need of treatment. The Examiner further states that Lerman teaches its use to assess calcium channel defects. The Examiner concludes therefore, that it would have been obvious to have modified Cherksey to include the use of an electroencephalogram to identify patients in need of the claimed treatment.

Applicant respectfully disagrees with the Examiner's conclusion. First, only claim 14 contains a limitation directed to the use of an electroencephalogram to identify patients in need of

the claimed treatment. Therefore, the grounds for this rejection set forth in paragraph 12 of the Office Action do not apply to claims 15-20.

According to claim 14, patients in need of treatment for seizures associated with epilepsy are identified by use of an electroencephalogram. Once identified such patients are treated with about 0.1 to about 500 mg agmatine or a derivative of agmatine to treat the seizures.

The primary reference, as discussed above, does not teach the identification of epileptic patients, nor does it teach treatment of epilepsy with agmatine or a derivative thereof, in any amount. Indeed, this reference does not even relate to the treatment of epilepsy or seizures.

The secondary reference cited by the Examiner fails to compensate for the shortcomings of the primary reference. Lermann fails to teach or suggest use of agmatine to treat epilepsy. Indeed, Lerman suggests that calcium channel defects may play a role in epilepsy, but offers no evidence in support of this conjecture, and in particular, does not disclose or suggest that agmatine is an effective treatment for epilepsy. This reference merely teaches that animal models with calcium channel defects may be useful in identifying compounds for treatment of epilepsy, but does not disclose or suggest the use of agmatine to treat epilepsy. In relying on this reference the Examiner has taken an improper hindsight approach to Applicant's invention, using the Applicant's own specification as a guide to select aspects of the prior art to recreate Applicant's invention.

Thus, the combined prior art does not teach or suggest the claimed invention. Accordingly, the rejection of claims 14-20 under 35 U.S.C. § 103(a) over the cited combination of art is respectfully traversed.

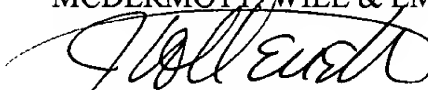
It is believed that the above represents a complete response to the Official Action and reconsideration is requested.

09/881,215

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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**Date: January 12, 2004**

WDC99 864557-1.050229.0267